AL-MAJALLA AL AHKAM AL ADALIYYAH
(The Ottoman Courts Manual (Hanafi))

BOOK XIII. ADMISSIONS.

CHAPTER I. CONDITIONS GOVERNING ADMISSIONS.

- 1572. An admission is a statement by one person admitting the claim of some other person against him. The person making the admission is called an admittor. The person in whose favour the admission is made is called the admittee. The subject of the admission is called the thing admitted.
- 1573. In order to be able to make a valid admission, a person must be of sound mind and have arrived at the age of puberty. Consequently, an admission by a minor, or a lunatic or an imbecile, whether male or female, is invalid. An admission made against such persons by their tutors or guardians is equally invalid. A minor,however, who is of perfect understanding and has been authorised is regarded as a person who has reached the age of puberty in respect to all acts performed by him which he has been authorised to do.
- 1574. A person in whose favour an admission is made need not be of sound mind. Consequently, a person may make a valid admission concerning property in favour of a minor or imperfect understanding and such person will be obliged to give up such property.
- 1575. A person making an admission must do so of his own free will. Consequently, an admission made as a result of force or constraint is invalid.(See Article 1006).
- 1576. A person making an admission should not be under interdiction. (See Sections II, III and IV of the Book of Interdiction.)
- 1577. An admission must not be contrary to obvious facts. Consequently, if the body of a minor bears no signs of puberty, he cannot be heard to make an admission that he has arrived at the age of puberty.
- 1578. A person in whose favour an admission is made must not be absolutely unknown; mere imperfect knowledge of such person, however, does not invalidate an admission.

  , Example:- If a person points to certain property in his possession and admits that it is the property of some indeterminate person, or if he admits that the property belongs to one of the inhabitants of a certain town, the inhabitants of such town being indeterminate in number, such person's admission is invalid. On the other hand, if he states that the property belongs to one of two definite persons or to one of the inhabitants of a certain quarter, and the inhabitants of such place are of a determinate number, the admission is valid. In the event of a person stating, as mentioned above, that certain property belongs to one of the two determinate persons, such persons may, if they agree to do so, take the property from the person making the admission and thereupon they become joint owners of such property. If they do not so agree, either of them may place the person making the admission upon his oath that such property is not his. If the person making the admission refuses to take the oath in respect to both persons, the property continues to be jointly owned between them. If the person making the admission refuses to take oath with regard to one of the persons only, the property goes absolutely to the person whose oath he refuses. If the person making the admission takes an oath with regard to both such persons, the former is not liable to any action on the part of the latter, the property belonging to him and remaining in his possession.

CHAPTER II. VALIDITY OF AN ADMISSION.

- 1579. A valid admission may be made with regard to a determinate and also with regard to an indeterminate object. The validity of an admission relating to contracts which can only be made with regard to determinate objects, however, such as sale and hire,depends upon the thing with regard to which the admission is made being determinate. Thus, a valid admission may be made by a person that a thing belonging to another person has been entrusted to his safe keeping, or that he has wrongfully appropriated or stolen the property of another and he shall be obliged to make known the nature of such property. But if a person admits that he has sold something to a certain person, or hired something from him such admission is invalid and he may not be called upon to say what thing he has sold or hired.
- 1580. The validity of an admission is not dependent upon the acceptance of such admission by the person in whose favour the admission is made. Should such person disclaim the admission, however, such admission is null and void. If the person in whose favour the admission is made disclaims part of such admission only, the admission is null and void in regard to that part only, and is valid in respect to the remainder.
- 1581. A difference as to the subject of the admission between the person making the admission and the person in whose favour it is made does not invalidate the admission. Thus, if a person brings an action for the recovery of one thousand piastres due under a loan, and the defendant admits one thousand piastres is due for the price of a thing sold, the difference in no way invalidates the admission.
- 1582. A request for a settlement with regard to any property is equivalent to an admission in respect thereto. Thus, if A requests B to repay a debt of one thousand piastres and request A to make a settlement for seven hundred piastres in respect to such debt, A admits the thousands piastres claimed. But if A states that he will settle the action in respect to the thousand piastres merely in order to avoid a dispute, there is no admission of the thousand piastres.
- 1583. If a person seeks to buy, hire or borrow property in the possession of another, or requests such person to bestow such property upon him by way of gift, or to give him such property for safe keeping, or the latter requests the former to take property into his safe keeping, and such person agrees to do so, there is an admission made by such person that the property is not his.
- 1584. An admission dependent on a condition is null and void. An admission dependent upon the arrival of a generally recognised period of time, however, is equivalent to an admission of a debt repayable at a future definite date.

  Example:- A informs B that he will pay him a certain sum of money if he reaches a certain place or if he undertakes a certain business. The admission is void and the sum of money need not be paid. But if A states that he will repay B a certain sum of money on the first of a certain month, or on the twenty-sixth of October next, such statement is considered to be an admission of debt repayable at a future definite date, and upon the arrival of such date, payment of the sum in question must be made. (See Article 40.)
- 1585. An admission may validly be made that a thing is undivided jointly-owned property. Consequently, if one person admits to another that he is in possession of an undivided share of certain immovable property held in absolute ownership belonging to him, such as a half or a third, and the latter confirms such admission, and the person making admission dies before the division and delivery of such property, the fact that the subject matter of the admission is an undivided share in no way invalidates such admission.
- 1586. An admission may validly be made by a dumb person using the recognised signs of such persons. An admission by signs cannot validly be made by a person who is able to speak. Thus, if one person asks another who is able to speak whether he is owing some third person a certain sum of money and such person nods his head, there is no admission of the debt.

CHAPTER III. EFFECT OF AN ADMISSION.

SECTION I. GENERAL.

- 1587. A person is bound by his admission in accordance with the terms of Article 79, unless the admission is proved to be false by a judgement of the Court. Thus, a person is legally entitled to a thing in the possession of another, which the latter has obtained by purchase. AT the trial, the purchaser, in order to prove his case, states that the thing sold belong4d to the vendor and that he sold it to him. The person legally entitled to such thing proves his claim and judgement is given by the Court in his favour. The purchaser may thereupon take action against the vendor and recover from him the price of the thing sold, because although at the trial he opposed the person legally entitled to the thing by admitting that such thing was the property of the vendor, he is not bound by the admission, the Court having found such admission to be void of any foundation.
- 1588. No person may validly retract an admission made with regard to private rights. Thus, if a person admits owing a certain sum of money to another and later retracts his admission, the retraction is invalid and he is bound by his admission.
- 1589. Should a person allege that he has not been truthful in making an admission, the person in whose favour the admission is made shall swear an oath that such admission is true.

  Example:- A gives a written acknowledgement that he has borrowed a certain sum of money from B. Later, A denies that he has borrowed such money in fact, in spite of his having given the acknowledgement, by reason of his not yet having received the money in question from B. The person in whose favour the admission is made shall then take

an oath that such admission is not false.

- 1590. If one person admits to another that he is in such person's debt to the extent of a certain sum of money, and the latter states that the money to paid is not his, but belongs to another person, and such person confirms that statement, the money in question becomes the property of the second person in whose favour the admission is made, but the right of receiving it belongs to the first person in whose favour the admission is made. Consequently, if the second person in whose favour the admission is made claims the money from the debtor, the latter is not obliged to pay it to him. If the debtor, however, pays the debt of his own free will to the second person in whose favour the admission is made, he is released from his debt and the first person in whose favour the admission is made cannot claim it again from the debtor.

SECTION II. DENIAL OF OWNERSHIP AND THE TITLE TO A THING LENT.

- 1591. If a person making an admission makes it in such a manner as to show that the subject matter of the admission belongs to him, the result is a gift to the person in whose favour the admission is made, but such gift does not become absolute until it has been handed over and received. If he does not do so, the result is an admission that the subject matter of the admission was the property of the person in whose favour the admission is made, prior to such admission, which is tantamount to a denial of ownership.

  Examples:-

  (1). A states that all his property and things in his possession belong to B, and that he has no right to them at all. The result is a gift to B of all property and things in A's possession at that time and delivery and receipt thereof are essential.

  (2). A states that all the property and things attributed to him, with the exception of the clothes he is wearing, belong to B and do not concern him in any way. The result is an admission by A that the property in question belongs to B. Such admission, however, does not include property acquired by A after the admission.

  (3). A states that all his property and things in his shop belong to his eldest son and that he has no right thereto whatsoever. The result is a gift to his eldest son of all his property and things in the shop at that time, and such property must be delivered. But if A states that all property and things in a certain shop of his belongs to his eldest son and that he has no right thereto whatsoever, the result is an admission in favour of his son that the property in such shop is the property of his son and he has denied ownership thereof. This admission,however, does not include any property placed in the shop afterwards.

  (4). A states that his shop situated in such and such a place belongs to his wife. The result is in the nature of a gift, of which delivery is necessary. But if A states that such and such a shop reputed to be his belongs to his wife, the result is an admission that the shop was his wife's property before such admission and not his own property.

- 1592. If a person states that the shop which he holds in absolute ownership and by title deed belongs to some other person, that he has no connection therewith of any sort, and that his name inscribed in the deed was lent for convenience only, the result is an admission that the shop belongs to that other person; or if a person states that a shop which he holds in absolute ownership bought by title deed from some other person was purchased on behalf of a third person, that the price was paid out of that person's property, and that the name of the first person was inscribed in the title deed for convenience only, the result is an admission that the shop was in fact the property of the third person.

- 1593. If a person is in possession of a written acknowledgement admitting a claim for a certain sum of money against some other person and states that such sum belongs to a third person, and that his name on the document has been inscribed for convenience only, the result is an admission that the sum in question belongs to such third person.

- 1594. If a person while in good health makes an admission disclaiming ownership as set out above, or admits that his name has been used for convenience only, his admission is valid and he is bound by it during his lifetime, and his heirs likewise after his death. The effect of an admission made as above while the person making the admission is suffering from a mortal sickness is governed by the terms of the following Chapter.

SECTION III. ADMISSION BY A PERSON SUFFERING FROM A MORTAL SICKNESS.

- 1595. A mortal sickness is a sickness where in the majority of cases death is imminent, and, in the case of a male, where such person is unable to deal with his affairs outside his home, and in the case of a female, where she is unable to deal with her domestic duties, death having occurred before the expiration of one year by reason of such illness, whether the sick person has been confined to bed or not. Should the sickness be of longer duration and the period of one year expire while in the same condition such person is regarded as being in good health and his transactions as valid, unless the illness increases, and his condition becomes changed for the worse. Should his illness increase, however, and his condition become worse resulting in death before the expiration of one year, he is considered from the time of the change up to his death, to have been suffering from a sickness.

- 1595. Should a person have no heir at all, or should a man have no heir other than his wife, or should a woman have no heir other than her husband, any admission made during the course of a mortal sickness is regarded as a bequest and will be upheld. Consequently, if a person having no heirs disclaims ownership of his property during a mortal sickness by making an admission that the whole thereof belongs to some other person, such admission is valid, and the estate of the deceased person may not be touched by the representative of the Treasury. Similarly, if a man having no heir other than his wife disclaims ownership of his property during a mortal sickness by making an admission that such property belongs to his wife, or a woman having no heir other than her husband disclaims ownership of all her property by making an admission that such property belongs to her husband, such admission is valid and the estate of neither of the deceased persons may be touched by the representative of the Treasury.

- 1597. An admission made by a person during an illness from which he recovers that property belongs to one of his heirs, is held to be valid.

- 1598. If a person after having made an admission during a mortal sickness that certain specific property, or a debt, belongs to one of his heirs, and then dies, the validity of such admission depends upon the ratification of the other heirs. If they agree, the admission is held to be good; if not, it is invalid. Provided that if the other heirs have agreed thereto during the lifetime of the person making the admission, they cannot withdraw their agreement and the admission is held to be valid. An admission with regard to something deposited for safe keeping, moreover, may always validly be made in favour of an heir. Thus, if a person during a mortal sickness admits that he has received property which he has deposited for safe keeping with his heir, or that he has consumed property belonging to his heir known to have been deposited with him for safe keeping, such admission is valid.

  Examples:-

  (1). A person admits that he has received property of his deposited for safe keeping with one of his sons. Such admission is valid and executory.

  (2) A person admits that one of his sons has received, as agent, money due to him from a certain person and that he has handed it over to him. Such admission is valid.

  (3). A person admits that he has sold the property of one his sons entrusted to him for safe keeping, or his diamond ring worth five thousand piastres lent to him for his use, and has spent the proceeds on his own business. Such admission is valid. The value of the ring must be made good from the estate.

- 1599. In this connection, by heir meant a person who was an heir at the of the sick person's death. Provided that if a right to inherit arises out of a new cause at the time of the death of the person making such admission and not previously, this shall in no way invalidate an admission made while that person was not an heir. Similarly, if a person during the course of a mortal sickness makes an admission in favour of a woman who is a stranger to him in respect to certain property, marries her and then dies, such admission is executory. If the right to inherit is not produced by such a new cause, however, but by an old one, the admission is not executory.

  Example:- A has a son and makes an admission in favour of one of his brothers by the same father and mother. Should the son predecease the father, the admission does not becomes executory merely because the brother in whose favour the admission was made has become his heir.

- 1600. An admission made during a mortal sickness but relating to matters concerning a period during which the person making the admission was in good health, is considered to be an admission made during a sickness. Consequently, if a person admits during a mortal sickness that he has been paid a certain number of piastres due from one of his heirs while he was in a state of good health, such admission is not executory unless the other heirs confirm the same. Again, if a person admits during a mortal sickness that he has made a gift of certain property of his to one of his heirs while in a state of good health, and that he has delivered the same, such admission is not executory unless confirmed by the other heirs, or proved by evidence.

- 1601. An admission made by a person during a mortal sickness to another person who is not one of such person's own heirs is good, even though it includes the whole of his property, whether consisting of some specific object or of some debt. Should it appear that the admission is false, however, it being a matter of common knowledge that at the time the admission was made, the subject matter of such admission had become the property of the person making the admission by way of sale, gift, or transfer on inheritance, such facts must be duly examined. If the admission was made when drawing up a will, the result is a gift, and delivery of such gift is necessary. If made when drawing up a will, it is taken to be a bequest. In any case, the admission is only valid up to one third of the property of the person making the admission, whether a bequest or a gift.

- 1602. Debts contracted in good health take priority over debts contracted during ill health, that is to say, in the event of the death of a person whose estate is overwhelmed by debts contracted before his mortal sickness, such debts are paid in priority to those contracted by him by way of admission during his mortal sickness. Consequently, debts contracted while in a state of good health are paid first out of the sick person's estate. If there is any balance remaining over, debts contracted during sickness and arising out

of clearly ascertained causes, such as purchase, loan, or destruction of property are considered to be debts contracted while in a state of good health. If the subject matter of an admission is some specific object, it is dealt with in the same manner. That is to say, if a person admits to some other person during the course of a mortal sickness that certain things are that person's property, such person has no right to the property with regard to which the admission has been made, unless the debts contracted during good health have been paid, or debts which are in the nature of debts contracted during good health and which for reasons as stated above, must be repaid.

- 1603.If a person admits during the course of a mortal sickness that he has been paid any sum due from any other person, not being a member of his family, such admission is receivable. If the debt was contracted by such person during the course of the illness, the admission is valid. Such admission, however, is not executory as regards persons who became creditors of the sick person while he was in a state of good health. If the debt was contracted by such person while in a state of good health, the admission is valid in any case and this whether there be debts which were contracted while in a state of good health or not.

  Example: - A while ill admits that he has sold certain property and received the price thereof while sick. Such admission is valid. Persons to whom he became indebted while in a state of good health, however, may refuse to be bound by such admission. If A, however, admits during the course of a mortal sickness that he has sold certain property while in a state of good health and has received the price thereof, such admission is valid in any case, and persons to whom he became indebted while in a state of good health are bound thereby.

- 1604. A person who pays a debt due to one of his creditors during the course of a mortal sickness may not thereby destroy the right of the other creditors. He may, however, repay a sum of money he borrowed and pay the price of property he bought while sick.

- 1605. In this connection, a guarantee of property is considered in the same light as the original debt. Consequently, if a person becomes surety for any debt contracted by his heirs or any sum due to him, during the course of a mortal sickness, it is not executory. If such person becomes surety for some other person, not being a member of his family, it is valid up to a third of his property. If such person admits during the course of a mortal sickness that he has become surety for a person, not being a member of his family, while in a state of good health, the admission is valid up to the whole extent of his property. Debts contracted during a state of good health, if any, however, are preferred.

CHAPTER IV. ADMISSIONS IN WRITING.

- 1606. An admission in writing is the same as an oral admission. (See Article 69).

- 1607. If a person causes his own admission to be written down by some other person, it has the force of an admission. Therefore if a person instructs a clerk to make out a document to the effect that he is owing another person a certain sum of money, and himself signs or seals such document, the document is regarded as though it were written in his own hand and is considered to be written admission.

- 1608. The entries made by a merchant in his books which are properly kept are in the nature of written admissions.

  Example:- A, a merchant, makes an entry in his own register that he owes B a certain sum of money. Such entry constitutes an admission of the debt, and, should the occasion arise, is considered as an oral admission.

- 1609. If a person himself writes or causes a clerk to write an acknowledgement of a debt, which he signs or seals and delivers to some other person, and if such acknowledgement is made out in due form, that is to say, in accordance with the usual practice, it constitutes an admission in writing and has the same force as an oral admission. Receipts which are normally given are of the same category.

- 1610. If any person as mentioned above writes or causes any other person to write, any acknowledgement of debt, which is signed or sealed, and which he admits to be his and then denies the debt contained therein, such denial is disregarded, and the debt must be paid.

  Should he deny that the acknowledgement is his, the handwriting or seal being well known, the denial is disregarded, and action is taken in accordance with the acknowledgement.

  If the handwriting and seal are not well known, such person shall be caused to write down specimens of his handwriting, which shall be submitted to experts. If they report that the hand writing in both cases is that of one and the same person, such person shall be ordered to pay debt in question.

  Finally, if the acknowledgement is free from any taint of fraud or forgery, action shall be taken in accordance with the acknowledgement. If it is not free from suspicion, however, and should the debtor deny the original debt, he shall, if the plaintiff so demand, be made to swear an oath that neither the debt nor the acknowledgement is his.

- 1611. Should any person give an acknowledgement of a debt as mentioned above, and then die, and the heirs admit that the acknowledgement was made by the deceased, the debt must be paid out of the deceased's estate.

  Should the heirs deny that the acknowledgement was made by the deceased, and should his handwriting and seal be well known, action shall be taken in accordance with such acknowledgement.

- 1612. If a purse full of money is found among the effects of a deceased person, and it is written thereon that the purse is the property of some particular person and has been given to the deceased on trust for safe keeping, the person in question has a right to take the purse from the estate of the deceased and there is no need for any further proof.

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